

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ARNULFO MARTINEZ,

Plaintiff,

Case No. 19-cv-1575-pp

v.

ANDREW M. SAUL,

Defendant.

**ORDER GRANTING PLAINTIFF'S AMENDED MOTION FOR LEAVE TO
PROCEED WITHOUT PREPAYING THE FILING FEE (DKT. NO. 6)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. He also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 2. On October 29, 2019, the court issued an order directing the plaintiff to file an amended motion for leave to proceed without prepaying the filing fee. Dkt. No. 4. The plaintiff has filed that amended motion. Dkt. No. 6.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that he does not have the ability to pay the filing fee. The plaintiff's affidavit indicates that he is not employed, he is not married, and he has no dependents he is

responsible for supporting. Dkt. No. 6 at 1. The plaintiff lists income from a retirement pension of \$1,079 per month. Id. at 2. Against this income, he lists monthly expenses of \$590 (\$150 rent, \$140 groceries, \$200 diabetes medication, \$100 “miscellaneous (personal care items)”). Id. at 2-3. The plaintiff does not own a car or a home or any other property of value, and he has no cash on hand or in a checking/savings account. Id. at 3-4. The affidavit states that the plaintiff lives with his brother, to whom he pays the rent and grocery expenses listed above. Id. at 4. Although the figures indicate that the plaintiff has approximately \$500 per month over and above his fixed expenses to spend, no doubt there are other costs of living the plaintiff must deal with and it appears that he has no savings. It would likely be a hardship for the plaintiff to have to come up with the cash to pay the required filing fee. The plaintiff has demonstrated that he cannot pay the \$350 filing fee and \$50 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner’s final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

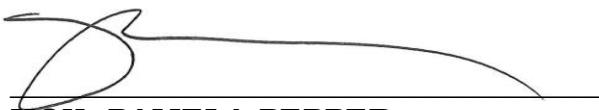
The complaint indicates that the plaintiff was denied Social Security benefits by the Commissioner; that the plaintiff suffers from disabling conditions of diabetes melitus, peripheral neuropathy, hypertension and obesity; and that the determination by the Commissioner that the plaintiff was not disabled is not supported by the substantial evidence provision of Social Security Administration regulations and is contrary to law. Dkt. No. 1 at 2-3. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's amended motion for leave to proceed without prepaying the filing fee. Dkt. No. 6.

The court **DENIES as moot** the plaintiff's original motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

Dated in Milwaukee, Wisconsin this 20th day of November, 2019.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge